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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,745

11/12/2003

Vivek Y. Reddy

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EXAMINER

MEHTA, BHISMA

ART UNIT

PAPER NUMBER

3767

MAIL DATE

DELIVERY MODE

06/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/706,745

**Applicant(s)**

REDDY ET AL.

**Examiner**

Bhisma Mehta

**Art Unit**

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 27-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to disclose the arrangement for detecting or treating at least one of cardiac abnormalities and cardiac inconsistencies where a location of the volume of the target area which receives the fluid is provided at a distance from a location of an introduction of the fluid to a portion of the subject.

### ***Claim Objections***

2. Claims 35, 36, 51, and 52 are objected to because of the following informalities: Claims 35 and 51 recite the limitation "the liquid" in line 2. Claims 36 and 52 recite the limitation "the liquid" in line 1. There is insufficient antecedent basis for this limitation in these claims.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 37-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 37, it is unclear what is meant by "a location

Art Unit: 3767

of the volume of the target area which receives the fluid is provided at a distance from a location of an introduction of the fluid to a portion of the subject” because the use of “a location of the volume of the target area” is unclear as to what is being claimed because a volume is not considered to have a location.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 26-52 are rejected under 35 U.S.C. 102(b) as being anticipated by Lardo et al (Patent Application Publication No. 2002/0095197). Lardo et al disclose an arrangement for treating cardiac arrhythmia comprising a fluid delivery system (4) adapted to systemically or locally introduce a fluid to a target area of a heart and an energy source (3) adapted to transmit energy in the form of light to at least one portion of the target area. In paragraph [0028], Lardo et al teach using a photodynamic or photosensitizing compound. In paragraph [0027], Lardo et al teach activation of the compound causes damage to those cells in which the compound has been localized. In

paragraph [0033], Lardo et al teach the energy source may be used to determine electrical activity within the heart.

7. Claims 27-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Pless (U.S. Patent No. 6,811,562). In lines 47-59 of column 9, Pless discloses an arrangement for treating cardiac arrhythmia comprising a fluid delivery system adapted to systemically or locally introduce a fluid to a target area of a heart and an energy source (300) adapted to transmit energy in the form of light to at least one portion of the target area. In lines 1-18 of column 9, Pless teaches using a photodynamic or photosensitizing compound and teaches that activation of the compound causes damage to those cells in which the compound has been localized. In lines 47-60 of column 2, Pless teaches energy source may be used to determine electrical activity within the heart.

### ***Response to Arguments***

8. Applicant's arguments filed April 4 2007 have been fully considered but they are not persuasive. In response to applicant's argument that Lardo et al and Pless do not disclose a fluid delivery system which is adapted to systemically introduce a fluid to a target area of a heart of a subject or which is adapted to introduce a fluid to a target area of a heart of a subject where a location of the volume of the target area which receives the fluid is provided at a distance from a location of an introduction of the fluid to a portion of the subject and is less than the volume of the volume of the heart, a recitation of the intended use of the claimed invention must result in a structural

Art Unit: 3767

difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Similarly, applicant's argument that Lardo et al and Pless do not disclose an arrangement in which a scar tissue target area has a predetermined metabolism and a liquid that is adapted to be received only by those areas of the heart having a metabolism which is greater than or equal to the predetermined metabolism is not persuasive as both Lardo et al and Pless disclose the claimed structural limitations, and, therefore, are seen as being capable of performing the intended use which is recited in the claims.

### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3767

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bhisma Mehta whose telephone number is 571-272-3383. The examiner can normally be reached on Monday through Friday, 7:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
BM

KEVIN C. SIRMONS  
SUPERVISORY PATENT EXAMINER

